

The Gazette of India



EXTRAORDINARY PART I—Section 1 PUBLISHED BY AUTHORITY

No. 391] NEW DELHI, TUESDAY, SEPTEMBER 9, 1952

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 6th September 1952

No. 57 E.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition presented under section 81 thereof is published for information.

N. C. GANGULI, Chairman,
District Judge's Office, Cuttack.

The 6th September, 1952

ELECTION PETITION No. 118 OF 1952

Presentation of Petition U/S 81.

IN THE MATTER of an Election ~~P~~etition under Chapter II of Part VI of the Representation of the People Act, 1951, calling in question the election to the House of People from the Ganjam-South Parliamentary Constituency (in Orissa State);

-And-

Parties to the petition U/S 82.

IN THE MATTER of Sri Sri Sri Krishna Chandra Gajapati Narayana Deo, Maharaja of Parlakimedi, son of (Late) Sri Sri Sri Goura Chandra Gajapati Narayana Deo, Rajyadhipati by profession, 60 years old, residing at Parlakimedi in Orissa State, a candidate from the Ganjam-South Parliamentary Constituency to this House of People *Petitioner*.....

-And-

(1) Sri Bijay Chandra Das, son of Sri Dayanidhi Das, Public man by profession, 40 years old, residing in Military Line, Berhampur (Orissa);

(2) Sri Dattaram V. Narasingrow, Advocate, 55 years old, residing at Berhampur (Orissa);

(3) Sri Satyananda Padhi, Advocate, 35 years old, residing at Berhampur (Orissa); and

(4) Sri Digambar Rath, Advocate, 48 years old, residing at Berahampur (Orissa). All duly nominated candidates at the Election, other than the petitioner, to the House of People from the Ganjam-South Parliamentary Constituency.—*Respondents*. Their addresses, for all purposes of processes and notices, are the same.

THE HUMBLE PETITION OF THE PETITIONER AFORESAID

Contents of Petition U/S 83.

Most respectfully sheweth:—

(1) That the petitioner filed his nomination paper as a Congress-Party Candidate to the House of People for the seat of Ganjam-South Parliamentary Constituency of the Orissa State in the last General Elections in India.

(2) That the other candidates, who were duly nominated at the said Election, were the respondents above-named.

(3) That the respondent No. 1, a Communist-Party Candidate, has been declared returned to the House of People and the said declaration has been published under the orders of the appropriate authority in the Official Gazette in accordance with the provisions of Section 67 of the Representation of the People Act, 1951, on the 14th February, 1952.

(4) That the respondent No. 1 filed an objection to the nomination of the petitioner alleging that he was disqualified to be chosen as and for being a Member of the House of People (one of the Houses of the Parliament) within the meaning of section 7(d) of the Representation of the People Act, 1951.

(5) That a true copy of the written objection filed by the said respondent is enclosed herewith and forms Annexure "A".

(6) That the alleged disqualification is said to have arisen out of certain covenants and terms of a Deed of Lease of land for Salt manufacture in Pundi Factory in the district of Vizagapatam made on 31-12-42, between His Excellency the Governor-General in Council and his successors-in-office and assigns on the one part and the petitioner (therein described as Raja Sri Sri Krishna Chandra Gajapati Narayan Deo, Rajah of — Parlakimedi) of the other part contained in Clauses 17(a) and 18 of the said Deed—Extracts from the Lease-deed annexed herewith as Annexure "B", which was but a renewal of a previous lease executed between the petitioner and the Government of Madras in the year 1917.

(7) That the Returning Officer acceded to the objections aforesaid holding that the covenants of Clause 17(a) amounted to a contract for the supply of goods to the appropriate Government (Government of India) in which the petitioner by him self had interest, or, in other words, to which he was a party and that the terms incorporated in Clause 18 of the Lease amounted to a contract for the performance of service undertaken by the aforesaid appropriate Government, and the petitioner had thus an interest therein—A true copy—made from the certified copy of the order of the Returning Officer dated 14-11-51 is filed herewith as Annexure "C".

(8) That it is submitted that the Returning Officer's decision is wrong and his (the petitioner's) nomination has been improperly rejected and that the result of the Election has been materially affected by such rejection of the nomination within the meaning of Section 100 (C) of the Representation of the People Act, 1951.

(9) That the petitioner further craves leave to submit, *inter alia*, that the lease of land for manufacture of Salt is a transfer of an interest in immovable property for consideration reserved to be paid—periodically in the shape of lease amount, duties, taxes, or other charges for the salt manufactured thereunder, which are liabilities provided for in the law relating to manufacture of Salt, that is the Indian Salt Act, the Madras Salt Act and the Rules made thereunder or subsequent statutory modifications such as are contained in Central Excise and Salt Act 1944 (Act I of 44) and the rules made thereunder; that there is no contractual obligation undertaken by the appropriate Government to perform any services or maintain any establishment in relation to a Salt manufacturing lease; and further that the liability of keeping and storing some salt as Government Reserve in respect of which the Government may have the option to purchase at such rate as may be decided by the Collector from time to time does not amount to a contract to supply goods but is an incident of the lease. The conditions aforesaid do not answer the description of a contract and cannot be construed stripped of their context and separated from the lease terms.

(10) That it is submitted that at the time of the nomination and the scrutiny there was no valid agreement or requisition (Dittam notice) for storage of any salt towards Government Reserve as stipulated in Clause 17(a) of the lease deed for the season of 1951.

Relief claimed by the petitioner U/S 84.(11) **Reliefs:—**

- (a) That the election of the returned candidate, namely, respondent No. 1. be declared void;
- (b) That the Election, which, as a whole, has been materially affected by the improper rejection of the petitioner's nomination, be declared wholly void; and
- (c) That the Tribunal be pleased to pass—such other order or orders as they deem fit and proper.

Enclosure U/S 117.

(12) A Government Treasury Receipt showing the deposit of Rs. 1,000/- (one thousand rupees) made by the petitioner abovenamed in the Government Treasury of Parlakimedi as Security for the costs of the petition under section 117 of the Representation of the People Act, 1951, is enclosed herewith and forms Annexure "D".

(Sd.) KRISHNACHANDRA GAJAPATI NARAYAN DEO,
Petitioner.

I, the abovenamed petitioner, do hereby solemnly affirm and declare that the statements contained in all the paragraphs of the foregoing petition (1 to 12) are based upon information received and believed to be true which accordingly I verify and sign to-day on 4th April, 1952 at Parlakimedi.

(Sd.) KRISHNACHANDRA GAJAPATI NARAYAN DEO,

Annexure 'A'.

To

The Returning Officer appointed by the Election Commission for parliamentary constituency of the House of the People No. 16. Ganjam South, Chatrapur.

Objections filed by Bijoy Chandra Das, a candidate for the House of People from Ganjam-South Constituency to the nomination of Sri Krishna Chandra Gajapati Deo, Maharaja of Parlakimedi to the said Constituency most respectfully shows that:—

1. The nomination of Sri Krishna Chandra Gajapati Deo, Maharaja of Parlakimedi for No. 16 Ganjam South Constituency is invalid for the following reasons:

- (i) He has entered into a written contract with the Central Government and took on lease at Pundi from the said Government for the manufacture, storage and sale of salt for the works connected therewith on condition or paying the land assessment on all portions of the land leased out to him and the contract of lease is still subsisting. He holds a license for the manufacture of such salt.
- (ii) Under the terms of the aforesaid contract, he cannot assign or part with the possession of the leased or any portion of it except with the written consent of the lessor, i.e. the Central Government.
- (iii) Under the terms of the aforesaid contract the lessor shall also be entitled to a lien every year on certain percentage of the quantity of salt, produced by him as lease in the factory and in any season in which notice is given he is under an obligation to store and keep in reserve certain quantity (heaps) of salt manufactured in the leased land in that season and the same shall be termed as "Government Reserve". Further the Government will have the option to purchase such reserved stock at such rate as may be decided by the Collector from time to time.
- (iv) Under the terms of the lease, he shall have to pay in cash every year so much of the charges incurred by the Collector in paying the Government establishment of the factory as may be in excess of such percentage of duty as the Central Board of Revenue may fix under Salt Act or any statutory modification thereof on salt manufactured used in the leased premises and removed therefore in the previous year.

- (v) The nomination of Sri Krishna Chandra Gajapati Deo, Maharaja of Parlakimedi is also invalid for the reason that he holds the office of a Director of Bharat Salt and Chemical Industries Ltd., Cuttack, which company has taken certain lands at Surla from the Central Government for the manufacture of salt etc. and the same is subsisting. The Government has control over the production and manufacture of salt. The Government have a subsisting interest in the management of salt by the above referred company of which the candidate Sri Krishna Chandra Gajapati Deo is a Director.

2. The nomination of Sri Krishna Chandra Gajapati Deo, Maharaja of Parlakimedi is invalid for the above reasons as he is disqualified for membership within the meaning of clause (d) and (e) of section 7 of the People's Representation Act of 1951.

(Sd.) BIJAY CHANDRA DAS.

14-11-1951.

Extracts from the Lease-Deed.....Annexure 'B'.

17(a).—The lessor shall be entitled to a lien every year on 50 per cent. of the salt produced by the lessee in the factory and the lessee shall in any season, in which notice is given before the 15th January, store at his own expense and keep in reserve the first and every succeeding alternate heap of 1200 or 2400 maunds (as the case may be) of salt manufactured in the leased land in that season. Such salt shall be termed 'Government Reserve'. The Government will have the option to purchase it at such rate as may be decided by the Collector from time to time for the factory provided that each heap of the Government Reserve stock of one season shall be released for disposal by the lessee as it is replaced by a heap of equal quantity of the new salt of the succeeding season.

18. The lessee shall pay in cash in a lump-sum on the first day of June in each year so much of the charge incurred by the Collector in paying the Government establishments of the factory as may be in excess of such percentage of duty as the Central Board of Revenue may fix under section 43 of the Madras Salt Act, 1889 or any statutory modification thereof on salt manufactured in the leased premises and removed therefrom in the previous official year.

Annexure "C".

CA 644/51.

14-11-1951.

ORDER.

CA 644/51.—Considered the objections raised by the candidate, Sri Bijaya Chandra Das to the nomination of Sri Krishna Chandra Gajapati Narayan Deo, Maharaja of Parlakimedi for the Ganjam South Parliamentary Constituency. The points of objections are discussed below:—

(1) Under para 18 of the lease of land for salt manufacture in Pundi Factory, entered into by Sri Sri Krishna Chandra Gajapati Narayana Deo, Raja (now Maharaja) of Parlakimedi (called the lessee) and his Excellency the Governor General in Council which includes his successors and assigns (called the lessor) and registered on 22nd January 1943, "the lessee shall pay in cash in a lump-sum so much of the charges incurred by the Collector in paying the Government establishment of the factory as may be in excess of such percentage of duty as the Central Board of Revenue may fix under section 43 of the Madras Salt Act, 1889 or any statutory modification thereof on salt manufactured in the leased premises and removed therefrom in the previous official year".

This condition clearly shows that Government of India have to maintain an establishment for the factory and any excess of expenditure incurred in maintaining the said establishment of the factory, which is over the percentage of duty paid, has to be paid by the said lessee (Maharaja) on the 1st day of June each year. The lease for the Pundi factory is a bundle of contracts undertaken by the lessor and the lessee, one of the contracts being for the performance of the services of maintaining an establishment in factory, undertaken by the lessor, the Government of India. In this contract the Maharaja of Parlakimedi has interest and therefore he comes under the disqualification in Clause (d) of section 7 of the Representation of the People Act 1951.

(ii) Under para 17(A) of the aforesaid lease "the lessor shall be entitled to a lien every year on 50 per cent. of the salt produced by the lessee in the factory and the lessee shall in any season, in which notice is given before the 15th January, store at his own expense and keep in reserve the first and every succeeding alternate heap of 1200 or 2400 maunds (as the case may be) of salt manufactured in the leased land in that season. Such salt shall be termed "Government Reserve". The Government will have the option to purchase it at such rate as may be decided by the Collector from time to time for the factory". This contract, out of the bundle of contracts in the lease, would clearly mean (a) that Government of India have a lien on 50 per cent. of the produce in the factory (b) that if notice is given by the Government of India before the 15th January in any year the lessee is bound to store 1200 or 2400 maunds of salt manufactured in the factory in that season as "Government Reserve", and (c) the Government of India have the option to purchase the said reserve at a rate to be fixed by the Collector from time to time. This contract is an undertaking by the lessee (The Maharaja) to sell salt to the Government of India whenever the latter would give a notice of such purchase before the 15th of January in any year. This is definitely a contract for the supply of good; (salt) to the Government of India. The Maharaja who is the lessee having interest in this contract comes under disqualification in section 7(d) of the Representation of the People Act, 1951.

2. The other points raised in the objection petition are in my opinion not maintainable.

3. For the reasons stated above the nomination paper filed by Sri Krishna Chandra Gajapati Narayan Deo, Maharaja of Parlakimedi is rejected.

14th November 1951

(Sd.) P. K. TRIPATHI,

Returning Officer.

(Sd.) KRISHNA CHANDRA GAJAPATI NARAYAN DEO

Petitioner.

New Delhi, the 9th September 1952

No. 19/86/52-Elec.III.- WHEREAS the election of Shri Chandreshwar Narain Prasad Singh of village Bhandari, Pargana Mahila, P. S. Belsand, District Muzaffarpur, as a member of the House of the People from the Muzaffarpur North-West constituency of that House, has been called in question by an election petition duly presented under part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Baijnath Prasad Varma of village Kamrauli, Sub-Division Sitamarhi, District Muzaffarpur;

AND WHEREAS, by notification No. 10/86/52-Elec.III, dated the 29th July, 1952 the Election Commission has appointed Shri Basu Prasad, retired District Judge, Ranchi, to be the Chairman of the Election Tribunal constituted for the trial of the said petition;

NOW, THEREFORE, in exercise of the powers conferred by section 86 of the said Act, the Election Commission hereby appoints:—

(1) Shri Hargovind Pd. Sinha, Retired District Judge, Patna.

(2) Shri Aditya Narain Lal, Advocate, Patna.

as the other members of the said Election Tribunal

No. 19/97/52-Elec. III.—Corrigendum.—In the Election Commission's notification No. 19/97/52-Elec. III dated the 2nd September, 1952, published at page 2093 in the extraordinary issue of the *Gazette of India*, Part I, Section I, dated the 2nd September, 1952, in paragraph 3 line 3, for "Shri V. K. Ghaskadbi" read "Shri Y. K. Ghaskadbi."

P. S. SUBRAMANIAN, Officer on Special Duty

